

Department of Defense

§ 9901.807

under that subpart are not appealable to MSPB.

§ 9901.806 Alternative dispute resolution.

The Secretary recognizes the value of using alternative dispute resolution methods such as mediation, an ombudsman, or interest-based problem-solving to address employee-employer disputes arising in the workplace, including those which may involve disciplinary or adverse actions. Such methods can result in more efficient and more effective outcomes than traditional, adversarial methods of dispute resolution. The use of alternative dispute resolution is encouraged. Such methods will be subject to collective bargaining to the extent permitted by subpart I of this part.

§ 9901.807 Appellate procedures.

(a) *General.* (1) A covered Department employee may appeal to MSPB an adverse action listed in § 9901.805(a). Such an employee has a right to be represented by an attorney or other representative of his or her own choosing. The procedures in this subpart do not apply when the action is taken under the special national security provisions established by 5 U.S.C. 7532.

(2)(i) This section modifies MSPB's appellate procedures with respect to appeals under this subpart, as applicable.

(ii) MSPB will refer appeals to an AJ for adjudication. The AJ must make a decision at the close of the review and provide a copy of the decision to each party to the appeal and to OPM.

(3) The Director of OPM may, as a matter of right at any time in the proceeding, intervene or otherwise participate in any proceeding under this section in any case in which the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

(4) If the AJ is of the opinion that an appeal could be processed more expeditiously without adversely affecting any party, the AJ may—

(i) Consolidate appeals filed by two or more appellants; or

(ii) Join two or more appeals filed by the same appellant and hear and decide them concurrently.

(5) If an employee has been removed under subpart G of this part, neither the employee's status under any retirement system established by Federal statute nor any election made by the employee under any such system will affect the employee's appeal rights.

(6) All appeals, including class appeals, will be filed no later than 20 days after the effective date of the action being appealed, or no later than 20 days after the date of service of a decision under subpart G of this part, whichever is later.

(7) Either party may file a motion to disqualify a party's representative at any time during the proceedings.

(b) *Case suspension.* Requests for case suspensions must be submitted jointly by the parties.

(c) *Settlement.* (1) An MSPB AJ may not require any party to engage in settlement discussions in connection with any action appealed under this section. Where the parties voluntarily agree to enter into settlement discussions under paragraph (c)(2) of this section, if either party decides that such discussions are not appropriate, the matter will proceed to adjudication.

(2) Where the parties agree to engage in formal settlement discussions, these discussions will be conducted by an official other than the AJ assigned to adjudicate the case. Nothing prohibits the parties from engaging in settlement discussions on their own.

(d) *Discovery.* The parties may seek discovery regarding any matter that is relevant to any of their claims or defenses. However, by motion, either party may seek to limit such discovery because the burden or expense of providing the material outweighs its benefit, or because the material sought is privileged, not relevant, unreasonably cumulative or duplicative, or can be secured from some other source that is more convenient, less burdensome, or less expensive.

(1) Prior to filing a motion to limit discovery, the parties must confer and attempt to resolve any pending objection(s).

(2) Neither party may submit more than one set of interrogatories, one set